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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,079	08/21/2003	Erik John Hasenoehrl	9343	6936

27752 7590 08/24/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/645,079		HASENOEHRL ET AL.	
	Examiner		Art Unit	
	Hasan S. Ahmed		1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/9/04;2/11/05;3/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of Applicants': (1) Response to Restriction Requirement filed on 2 August 2006; and (2) Information Disclosure Statements filed on 9 February 2004, 11 February 2005, and 21 March 2005.

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on 2 August 2006 is acknowledged. The traversal is on the ground that an examination of all original claims presented does not present a serious burden on the Examiner. This is not found persuasive because elements in Groups II-IV exist which require searches in areas not required for Group I.

The requirement is still deemed proper and is therefore made FINAL.

Claims 14-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected groups, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 2 August 2006.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 2-13 recite the limitation "cosmetic article." There is insufficient antecedent basis for this limitation in the claim. Based on the antecedent basis for these claims, the limitation should read "article."

2. Claim 13 recites the limitation "hydroxycarboxylic acids." There is insufficient antecedent basis for this limitation in the claim because claim 12 (from which claim 13 depends) does not recite "hydroxycarboxylic acids."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 4 recites lathering surfactant content in the claimed article of up to 1500% of the article.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Slavtcheff, *et al.* (U.S. Patent No. 6,451,331).

Slavtcheff, *et al.* disclose a layered effervescent article for cleansing body surfaces (see col. 2, lines 10-30).

The disclosed article is the instant article as claimed:

- the effervescent composition comprising solid alkaline and acidic materials of instant claim 1; and

- the liquid-permeable laminate comprising a first web (as defined in paragraph 0028 of the instant specification) layer and a second web layer with said effervescent composition present between the first and second layers (see col. 2, line 67 – col. 3, lines 9, 32 and 46-56; figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.* (U.S. Patent No. 5,110,843).

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The disclosed article may further comprise:

- an anionic lathering surfactant (instant claim 3), such as an isethionate, a taurate or a sulfate (instant claim 5). See col. 4, line 65 – col. 5, line 8.
- an effervescing composition comprising:
 - 1-80 % of an alkaline material such as, *inter alia*, azides (instant claim 10) and sodium bicarbonate (instant claim 11) (see col. 4, lines 20-25); and

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- 1-80% of an acidic material such as, *inter alia*, toluene sulfonic acid (instant claim 12) (see col. 4, lines 29-53).

Slavtcheff, *et. al.* explain that combining the disclosed agents into one cleansing article is beneficial because it forms a convenient delivery package (see col. 1, lines 14-20).

The Slavtcheff, *et. al.* reference differs from the instant claims in that it does not teach a surfactant layer distributed over the first web layer (see instant claim 2).

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-56).

The disclosed article may contain a layer comprising a cleaner or detergent (see col. 5, lines 49-52).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a surfactant to the top layer of a multi-layer personal cleansing article. One of ordinary skill in the art at the time the invention was made would have been motivated to add surfactant to the cleansing article because it forms a convenient delivery package, as explained by Slavtcheff, *et. al.*

2. Claims 6,7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.*

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant case in that it does not disclose the bonding agents of instant claim 7.

However, the reference teaches that the layers of the disclosed article are heat fused (instant claim 6) at the outer perimeter (instant claim 9). See col. 3, lines 48-49.

Thus, burden shifts to Applicants to show an unexpected result with use of the bonding agents recited in instant claim 7.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.*

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant case in that it does not teach the third layer to the second layer of instant claim 8.

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-40).

Bries, *et. al.* explain that multiple layers are beneficial for "...support, reinforcement, strength, abrasiveness, etc." See col. 5, lines 49-52.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a third layer to the second layer of the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third layer to the cleansing article for, *e.g.*, support, reinforcement, strength, and abrasiveness, as explained by Slavtcheff, *et. al.*

Double Patenting

Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of

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copending Application No. 10/645,080 ('080). Although the conflicting claims are not identical, they are not patentably distinct from each other because '080 claims an layered article for cleansing body surfaces (claim 1) comprising an effervescent composition (claim 1) and a surfactant (claim 17).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/949,833 ('833). Although the conflicting claims are not identical, they are not patentably distinct from each other because '833 claims a laminate structure (claim 1) comprising an effervescent composition (claim 1).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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